

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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State Bar of Nevada,

Case No. 2: 22-cv-01014-RFB-DJA

PLAINTIFF,

ORDER

V.

Edward Clint Allen

DEFENDANT.

I. INTRODUCTION

Before the Court for consideration is the following: Defendant Allen's Motion to Dismiss (ECF No. 7), Plaintiff State Bar of Nevada's Motion to Remand to State Court (ECF No. 13), the Report and Recommendation (ECF No. 17) of the Honorable Judge Daniel J. Albregts, United States Magistrate Judge, and Defendant's Motion to Extend Time (ECF No. 22).

For the foregoing reasons, the Magistrate Judge's Report and Recommendation is accepted and adopted in full, Plaintiff's motion to remand is granted, and Defendant's motions are denied as moot.

II. DISCUSSION

A district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). A party may file specific written objections to the findings and recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Local Rule IB 3–2(a). When written objections have been filed, the district court is required to “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1); see also Local

1 Rule IB 3-2(b).

2 In this case, the Magistrate Judge's Report and Recommendation recommends granting
 3 Plaintiff's motion remand and dismissing this action for lack of jurisdiction. The Magistrate Judge
 4 concluded that the Court lacks jurisdiction to hear this case because it does not arise under federal
 5 law. This is because Plaintiff's Complaint has only one cause of action for violation of Nevada
 6 Revised Statute 7.825(1)(a), and that cause of action arises under Nevada law and not federal law.¹
 7 The Magistrate Judge also rejected Defendant's argument that Plaintiff has "artfully pleaded" a
 8 federal claim as a state claim as the alleged conduct Defendant is accused of is not conduct
 9 governed exclusively by federal law. This is because, the Report and Recommendation notes,
 10 regulating the conduct of the attorneys it licenses—and prohibiting the practice of law by those it
 11 does not—is the purview of state courts.

12 Defendant filed an objection to the Magistrate Judge's Report and Recommendation on
 13 October 25, 2022, ECF No. 18. Defendant objects to the Report and Recommendation because he
 14 has an imminently forthcoming countercomplaint, asserting that the Court has jurisdiction over
 15 this matter, and seeking declaratory and injunctive relief against Plaintiff. Also, Defendant
 16 contends that Plaintiff's attempt to enforce the Nevada state law in its Complaint against him for
 17 injunctive relief violates his constitutional rights.

18 The Court agrees with the Magistrate Judge's recommendation. First, Defendant's
 19 Objection is not responsive to the grounds upon which the Magistrate Judge recommends granting
 20 Plaintiff's motion remand and dismissing this action for lack of jurisdiction. See 28 U.S.C. §
 21 1447(c); Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987); Sullivan v. First Affiliate
 22 Securities, Inc., 813 F.2d 1368, 1371-72 (9th Cir. 1987); Gadda v. Ashcroft, 377 F.3d 934, 944
 23 (9th Cir. 2004). Second, under the well-pleaded complaint rule, a defendant's claims or defenses
 24 may not serve as a basis for removal. See Takeda v. Nw. Nat'l Life Ins. Co., 765 F.2d 815, 821-22
 25 (9th Cir. 1985). Furthermore, potential counterclaims are not considered in evaluating whether a
 26 federal question appears on the face of a plaintiff's complaint. Vaden v. Discover Bank, 556 U.S.
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28 ¹ The Complaint only seeks declaratory and injunctive relief, pursuant to Nevada Revised Statute 7.825, against Defendant to prohibit him from the unauthorized practice of law in the state of Nevada.

1 49, 60 (2009) (explaining that federal question jurisdiction cannot “rest upon an actual or
2 anticipated counterclaim”). The Court has reviewed the record in this case and finds the rest of
3 Defendant’s other arguments without merit.

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5 **III. CONCLUSION**

6 **IT IS THEREFORE ORDERED** that the Report and Recommendation (ECF No. 10) is
7 ACCEPTED and ADOPTED in full.

8 **IT IS FURTHER ORDERED** that Defendant Allen’s Motion to Dismiss (ECF No. 7) is
9 DENIED as moot.

10 **IT IS FURTHER ORDERED** that Plaintiff State Bar of Nevada’s Motion to Remand to
11 State Court (ECF No. 13) is GRANTED.

12 **IT IS FURTHER ORDERED** that Defendant Allen’s Motion to Extend Time (ECF No.
13 22) is DENIED as moot.

14 The Clerk of the Court is instructed to close this case.

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17 **DATED:** December 6, 2022

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RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE